

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

REG-2008-00023

June 17, 2008

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING
REGARDING TITLE INSURANCE REBATES AND COMMISSIONS**

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed regulations governing rebates and commissions involving title insurers, underwritten title companies and controlled escrow companies.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes these regulations pursuant to the authority vested in him by California Insurance Code Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. The proposed regulations implement, interpret, and make specific California Insurance Code Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations at the following date, time, and place:

**Date and Time: August 13, 2008
 10:00 a.m.**

**Location: 45 Fremont Street
 22nd Floor Hearing Room
 San Francisco, California 94105**

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mary Ann Shulman, Senior Staff Counsel
California Department of Insurance
Legal Division
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Shulmanm@insurance.ca.gov
Telephone: (415) 538-4133
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Rebecca Westmore, Senior Staff Counsel
California Department of Insurance
Legal Division
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
WestmoreR@insurance.ca.gov
Telephone: (916) 492-3186
Facsimile: (916) 324-1883

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on August 13, 2008**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor

300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Insurance Code Section 12404 prohibits a title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business. Section 12404(d) provides that reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the referral of title business, as specified.

The Insurance Commissioner proposes adoption of these regulations to clarify the standards for such reasonable expenditures. The proposed regulations also require reporting and maintenance of documentation in order to monitor expenditures by title marketing and sales representatives employed by, or independent contractors of, a title insurer, underwritten title company or controlled escrow company that benefit a person, as defined in Insurance Code Section 12404(b)(1).

Section 2555.5 Preamble

This proposed new section describes the objectives and purpose of the proposed amendments and treatment of confidentiality of the information requested by the Insurance Commissioner.

Section 2555.6 Definitions

This proposed new section defines the key term of title marketing and/or sales representative, as used in the regulations, to avoid confusion.

Section 2555.7 Standards of Reasonable Expenditures

Section 12404(d) of the California Insurance Code provides that certain reasonable expenditures are deemed not to constitute an inducement for the placement or referral of title business, but does not specifically set forth the standards for reasonable expenditures. This proposed new section provides the standards to fill this gap.

Section 2555.8 Reporting and Record Documentation

Section 12404(d) of the California Insurance Code also does not provide for a reporting process to monitor reasonable expenditures made on behalf of, or benefiting a person, as defined in Insurance Code Section 12404(b)(1) to ensure compliance. This proposed new section specifies the reporting and documentation requirements of title insurers,

underwritten title companies and controlled escrow companies to clarify their obligations under the existing law.

Section 2555.9 Penalties

Sections 12409, 12410 and 12411 of the Insurance Code provide for enforcement remedies for noncompliance with Section 12404. This new section makes clear that the Insurance Commissioner is entitled to any of these enforcement remedies for failure to comply with provisions of these regulations. Also, this new section makes explicit that nothing in these regulations alters the liability of an insurer, underwritten title company or controlled escrow company for acts of its employees and/or independent contractors.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

PRE-NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

As provided by Government Code Section 11346.45, the Insurance Commissioner has not circulated this regulatory language prior to publication of this Notice because it does not involve a complex subject and the regulations can easily be reviewed during the comment period.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES / SCHOOL DISTRICTS / FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Insurance Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

EFFECT ON SMALL BUSINESSES

The Insurance Commissioner has initially determined that the proposal will have minimal, if any, effect on small businesses and invites comments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The agency invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PLAIN ENGLISH

The text describing the proposal is in plain English except to the extent that technical terms could not be avoided. Those technical terms are defined in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons which sets forth the reasons for the regulations in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, together with the text of the proposed regulations, and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to a contact person listed above.

QUESTIONS REGARDING REGULATIONS / ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of the proposed rulemaking file. **By prior appointment**, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday, the rulemaking file is available for inspection at the public viewing rooms at 45 Fremont Street, 22nd Floor, San Francisco, California 94105 by calling 415/538-4300, and at the Ronald Reagan State Building, 300 South Spring Street, Los Angeles, CA 90013 by calling 213/346-6707. Interested persons may direct questions about the proposed action, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact persons listed above.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

FINAL STATEMENT OF REASONS

Once prepared, the Final Statement of Reasons will be made available through the contact persons listed above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, this Notice of Proposed Action, and the text of regulations will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

STEVE POIZNER

Insurance Commissioner

Dated: June 17, 2008

By: _____/s/_____

Mary Ann Shulman
Senior Staff Counsel